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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/753,531	01/09/2004	Yasuhiko Kenmochi	2038-320	6485

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EXAMINER

HILL, LAURA C

ART UNIT	PAPER NUMBER
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3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/753,531

Applicant(s)

KENMOCHI ET AL.

Examiner

Laura C. Hill

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 and 18-23 is/are pending in the application.
- 4a) Of the above claim(s) 11-16, 18-21 and 23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see pages 9-11, filed 4 August 2006, with respect to the rejection(s) of claim(s) 1-16 and 18-23 under Otsubo (US 2004/0133178) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Otsubo (US 6,666,851) as discussed below.

Priority

2. Examiner notes that the present application receives a foreign priority date of 1 October 2003 for examination purposes.

Election/Restrictions

3. Claims 11-16, 18-21 and 23 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Since Applicant did not point out errors in the restriction requirement dated 6 October 2006, the response is treated as being made without traverse.

Specification

4. The **title of the invention has been changed** in accordance with Applicant's amendment dated 4 August 2006 to the following: Pull-on Disposable Wearing Article with Tapered Folding Guide Lines and Tucking Zones.

Claim Rejections - 35 USC § 112

5. The rejection of Claim 11 under 35 USC 112, first paragraph has been removed in view of Applicant's remarks dated 4 August 2006.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 4-10 and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Otsubo (US 6,666,851).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

Regarding claims 1, 7 and 22 Otsubo discloses pull-on/brief type disposable diaper 1 (column 1, lines 49-50) comprising a liquid absorbent core 14 laid in front region 2 (column 2, lines 63-67, figure 1); a crotch region 10 having tapering first folding guide lines L1 extending from first leg surrounding lateral margins 7a toward a

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transverse middle zone 10a and tapering second folding guide lines L2 extending from second leg surrounding lateral margins towards a transverse middle 10a and a third zone S3 except first zone S1 and second zone S2 (column 3, lines 15-30); first and second leg elastics and longitudinal barriers 30 extending across the first zone S1 to the third zone S3 (column 4, lines 35-40, figure 6); said first zone S1 and said second zone S2 being pulled inward to form tucks which are convexly inward of a leg hole 7 (column 3, lines 39-48, figure 2).

Regarding claim 4 Otsubo further inherently discloses absorbent core 14 having a lower stiffness in the first and second zones than in the third zones since folding lowers stiffness and the first and second zones contain more folds than the third zone which contains no folds. The discovery of a previously unappreciated property of a prior art composition, or of a scientific explanation for the prior art's functioning, does not expressly disclose not render the old composition patentably new to the discoverer. *Atlas Powder Co. v. Ireco Inc.*, 190F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999). Thus the claiming of a new use, new function or unknown property which is inherently present in the prior art does not necessarily make the claim patentable. *In re Best*, 562 F.2d 1252, 1254, 195 USPQ 430, 433 (CCPA 1977).

Regarding claims 5 and 22 Otsubo disclose absorbent core 14 present in first and second zones S1, S2 (column 3, lines 49-54, figures 1, 5, and 7).

Regarding claim 6 Otsubo further discloses absorbent core 14 disposed between liquid pervious topsheet 12 and liquid impervious backsheet 13 (column 2, lines 63-67).

Regarding claims 8-9 Otsubo further discloses elastics 30 are directly attached to core 14 and thus disposed between impervious backsheet 13 and core 14 (column 4, lines 35-40).

Regarding claim 10 Otsubo further discloses elastics 30 are shorter in a longitudinal direction than core 14 (figures 1 and 6).

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 2-3 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Otsubo (US 6,666,851). Otsubo discloses elastic members 30 as discussed above with respect to claim 1. Otsubo inherently discloses the contraction percentage and stretch stress ranges claimed since Where the claimed and prior art products are identical or substantially identical in structure or composition, or are produced by identical or substantially identical processes, a prima facie case of either anticipation or obviousness has been established. *In re Best*, 562 F.2d 1252, 1255, 195 USPQ 430, 433 (CCPA 1977). Furthermore, since a compound and all its properties are inseparable. *In re Papesch*, 315 F.2d 381, 391, 137 USPQ 43, 51 (CCPA 1963), these values are met since Otsubo discloses the claimed elastics.

Alternatively these values are well known result effective variables since they are a result of the type of elastics used based on their end use. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify

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Otsubo with the claimed ranges, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. *In re Boesch and Slaney*, 617 F. 2d 272, 205 USPQ 215 (CCPA 1980).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Taylor (US 3,884,234) is cited for showing disposable diaper having two sets of fold lines 38 tapering towards a transverse middle of a crotch region. Eckert et al. (US 3,774,610) is cited for showing tapered fold lines 14a, 14b that form tucks for improved leg fit. Lawson (US 4,695,278) discloses flap elastics 60, barrier cuffs 62, gasketing cuffs 56 for improved lateral leakage prevention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (hours vary).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura C. Hill
Examiner
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LCH

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TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

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